

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID F. EVANS, et al,

Plaintiffs,

vs.

THE CITY OF DURHAM, et al,

Case No. 1:07-CV-00739

---

**DEFENDANT DAVID ADDISON'S  
MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT  
FED. R. CIV. P. 12(b)(6)**

---

Defendant David Addison ("Defendant") respectfully moves the Court, pursuant to FED. R. CIV. P. 12(b)(6), to dismiss Plaintiffs' Second Amended Complaint for failure to state a claim upon which relief can be granted. In support thereof, and pursuant to this Court's February 16, 2010 Order, (Docket # 115), Defendant incorporates the reasons set forth in his Brief in support of his original Motion to Dismiss, (Docket # 41), his Reply Brief in Support of his Motion to Dismiss, (Docket # 62), his Supplemental Brief in Support of their Motion to Dismiss, (Docket # 99), and his Memorandum of Subsequently Decided Authority, (Docket # 114).

Defendant notes that in their Second Amended Complaint Plaintiffs eliminated causes of action against Defendant in his official capacity where the City was named, as well as state law causes of action against Defendant, save for causes of action for malicious prosecution and intentional infliction of emotional

distress. Thus, it is not now necessary for the Court to consider pages 8-9 (regarding official capacity claims) or pages 21-23 (regarding Causes of Action 16 and 19) in Defendant's initial brief (Docket # 41).

Because of the complexity of the causes of action at issue in this case, Defendants request oral argument be scheduled on their Motion to Dismiss pursuant to Local Rule 7.3(c)(1).

WHEREFORE, Defendant Addison respectfully prays the Court that:

1. The Action against this Defendant be dismissed;
2. Judgment be entered for Defendant;
3. Plaintiffs have and recover nothing from Defendant; and
4. Defendant have such other and further relief as the Court shall deem just and proper.

Respectfully submitted, this the 10th day of March, 2010.

MAXWELL, FREEMAN & BOWMAN,  
P.A.

By: /s/ James B. Maxwell  
James B. Maxwell  
N.C. State Bar No. 2933  
*Attorneys for Defendant Addison*  
P.O. Box 52396  
Durham, North Carolina 27717  
Telephone: (919) 493-6464  
[jmaxwell@mfbpa.com](mailto:jmaxwell@mfbpa.com)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Brendan V. Sullivan, Jr.  
Robert M. Cary  
Christopher N. Manning  
Charles Davant IV  
WILLIAMS & CONNOLLY, LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005  
*Attorneys for Plaintiffs Evans and Finnerty*

David S. Rudolph  
RUDOLPH, WIDENHOUSE &  
FIALKO  
312 W. Franklin Street  
Chapel Hill, NC 27516  
*Attorneys for Plaintiff Seligmann*

Robert J. King, III  
Kearns Davis  
BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, LLP  
Post Office Box 26000  
Greensboro, NC 27420  
*Attorneys for Defendants DNA Security, Inc. and Richard Clark*

Robert A. Saar  
Nicholas J. Sanservino, Jr.  
OGLETREE DEAKINS NASH  
SMOAK  
& STEWART, PC  
2301 Sugar Bush Rd., Suite 600  
Raleigh, NC 27612  
*Attorneys for DNA Security*

James A. Roberts, III  
LEWIS & ROBERTS, PLLC  
1305 Navaho Drive, Suite 400  
Raleigh, NC 27605  
*Attorneys for Brian Meehan*

Paul R. Dickinson, Jr.  
LEWIS & ROBERTS, PLLC  
590 Fairview Rd., Suite 102  
Charlotte, NC 28210  
*Attorneys for Brian Meehan*

Reginald B. Gillespie, Jr.  
FAISON & GILLESPIE  
Post Office Box 51729  
Durham, NC 27717  
*Attorneys for Defendant City of Durham*

Joel M. Craig  
Henry W. Sappenfield  
KENNON, CRAVER, BELO, CRAIG  
&  
MCKEE, PLLC  
Post Office Box 51579  
*Attorneys for Defendant Himan*

David W. Long  
Eric P. Stevens  
POYNER & SPRUILL, LLP  
Post Office Box 1801  
Raleigh, NC 27602-1801  
*Attorneys for Defendant Gottlieb*

Linwood Wilson  
6910 Innesbrook Way  
Bahama, NC 27503  
*Pro Se*

James B. Craven, III  
P.O. Box 1366  
Durham, North Carolina 27702  
*Attorneys for Michael Nifong*

Patricia P. Kerner  
Hannah G. Styron  
D. Martin Warf  
TROUTMAN SANDERS LLP  
434 Fayetteville Street, Suite 1900  
Raleigh, North Carolina 27601  
*Attorneys for Defendants Baker,  
Chalmers, Council, Hodge, Lamb,  
Ripberger, and Russ*

Richard D. Emery  
Ilann M. Maazel  
EMERY, CELLI, BRINKERHOFF &  
ABADY, LLP  
75 Rockefeller Plaza, 20th Floor  
New York, NY 10019  
*Attorneys for Plaintiff Seligmann*

Roger Warrin  
Michael Vatis  
John P. Nolan  
Leah M. Quadrino  
STEPTOE & JOHNSON, LLP  
Washington, DC 20036

This the 10th day of March, 2010.

Respectfully submitted,

By: /s/ James B. Maxwell  
James B. Maxwell  
N.C. State Bar No. 2933  
*Attorneys for Defendant Addison*  
P.O. Box 52396  
Durham, North Carolina 27717  
Telephone: (919) 493-6464  
jmaxwell@mfbpa.com